





IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MIKE R. PARGA,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

APPELLEE'S BRIEF

---

APPEAL FROM  
THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

---

WM. MATTHEW BYRNE, JR.  
United States Attorney

ROBERT L. BROSIO  
Assistant United States Attorney  
Chief, Criminal Division

RONALD S. MORROW  
Assistant United States Attorney

1200 U. S. Courthouse  
312 North Spring Street  
Los Angeles, California 90012  
Telephone: 688-2413

Attorneys for Appellee  
United States of America



## TOPICAL INDEX

	<u>Page</u>
Table of Authorities	ii
I STATEMENT OF JURISDICTION	1
II APPLICABLE STATUTES	2
III QUESTION PRESENTED	4
IV STATEMENT OF FACTS	4
V ARGUMENT	8
THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THE CONVICTION.	8
CONCLUSION	12



## TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
Brothers v. United States, 328 F. 2d 151 (9th Cir. 1964)	10
Cellino v. United States, 276 F. 2d 941 (9th Cir. 1960)	10
Glasser v. United States, 315 U. S. 60 (1942)	8
Hernandez v. United States, 300 F. 2d 114 (9th Cir. 1962)	9
Nye & Nissen v. United States, 168 F. 2d 846 (9th Cir. 1948), aff'd 336 U. S. 613 (1949)	8
Williams v. United States, 290 F. 2d 451 (9th Cir. 1961)	10

### Statutes

Title 18 United States Code:	
§3231	2
Title 21 United States Code:	
§174	11
§176a	1-2, 10-11
Title 26 United States Code:	
§4742(a)	1-3
Title 28 United States Code:	
§1291	2
§1294	2





IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MIKE R. PARGA,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

APPELLEE'S BRIEF

I

STATEMENT OF JURISDICTION

On August 2, 1967, the appellant was indicted in three counts by the Federal Grand Jury for the Central District of California, for the transportation and facilitation of 100 kilograms of marihuana, its sale, and its transfer without receiving an order form, in violation of Title 21, United States Code, Section 176a, and Title 26, United States Code, Section 4742(a) [C. T. 1].<sup>1/</sup> Following a court trial before the Honorable Charles H. Carr, United States District Judge, on October 24, and 25, 1967, Parga was

---

<sup>1/</sup> "C. T. " refers to Clerk's Transcript.



found guilty of Count One of the Indictment, transportation and facilitation of marihuana, and on November 20, 1967, he was sentenced to the custody of the Attorney General for 10 years [C. T. 24]. After the Government announced it would not proceed on Counts 2 and 3 a motion for acquittal was granted as to those counts.

There was a notice of appeal filed on November 22, 1967 [C. T. 25].

The District Court had jurisdiction under the provisions of Title 18, United States Code, Section 3231, Title 21, United States Code, Section 176a, and Title 26, United States Code, Section 4742(a).

This Court has jurisdiction to review the judgment pursuant to Title 28, United States Code, Sections 1291 and 1294.

## II

### APPLICABLE STATUTES

Title 21, United States Code, Section 176a provides as follows:

"Notwithstanding any other provision of law, whoever knowingly, with intent to defraud the United States, imports or brings into the United States marihuana contrary to law, or smuggles or clandestinely introduces into the United States marihuana which should have been invoiced, or receives, conceals, buys, sells, or in any manner facilitates the



transportation, concealment, or sale of such marihuana after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law, or whoever conspires to do any of the foregoing acts, shall be imprisoned not less than five or more than twenty years and, in addition, may be fined not more than \$20,000.

"Whenever on trial for a violation of this subsection, the defendant is shown to have or to have had the marihuana in his possession, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains his possession to the satisfaction of the jury.

"As used in this section, the term 'marihuana' has the meaning given to such term by section 4761 of the Internal Revenue Code of 1954."

Title 26, United States Code, Section 4742(a) provides as follows:

"(a) General requirement -- It shall be unlawful for any person, whether or not required to pay a special tax and register under sections 4751 to 4753, inclusive, to transfer marihuana, except in pursuance of a written order of the person to whom such marihuana is transferred, on a form to be issued in blank for that purpose by the Secretary or his delegate."



### III

#### QUESTION PRESENTED

Whether the evidence was sufficient to sustain conviction as to Count One.

### IV

#### STATEMENT OF FACTS

On May 15, 1967, Los Angeles Deputy Sheriff Delia Waddle, met with Mike R. Parga and an informant of the Sheriff's Office at a junk yard in Gardena, California [R. T. 27-29]. <sup>2/</sup> At the junk yard the informant gave Parga \$85 which Waddle had given the informant a few minutes before [R. T. 31]. Parga stated he did not have any marihuana with him at that time and he would have to go to his residence to pick it up [R. T. 32]. The three proceeded to Parga's home [R. T. 33].

On the way to Parga's home, Waddle stated that she "wanted to make a future purchase of approximately 100 kilos of marihuana. I asked Mr. Parga if he could get this for me and he said yes, that he could get in unlimited amounts. The amount was not in issue." [R. T. 33].

Upon arriving at Parga's residence, Parga asked Waddle and the informant to wait in the living room [R. T. 33]. Parga

---

<sup>2/</sup> "R. T." refers to Reporter's Transcript





returned to the living room and handed Waddle a package which she determined was marihuana [R. T. 34-35].

Following the transfer of the marihuana, on the return trip to the junk yard, Waddle asked Parga how the marihuana was obtained [R. T. 36]. Parga related the following:

" . . . I had a conversation in substance with Mr. Parga relating how we -- the marihuana was brought across the border, and I made the statement that wasn't it easy to get caught, and Mr. Parga made the statement that if the person didn't know that they were carrying it they wouldn't be nervous or jittery about it and therefore would not have a nervous attitude.

"I then asked him, 'Well, how would you do that?'

"He continued to relate to me a form that it was done in the way he said that we take numerous cars and trucks across the border, and with numerous drivers, and he said the drivers do not know who is going to be driving it back or who is going to have it in their automobiles, and in this way there wouldn't be reason for someone to be nervous or jittery, because they wouldn't know that it was in their automobile.

"He said that they had done this in the past, that it had worked, and that they -- and that they would be doing it again shortly, that they had some buried



heroin across the border that they were going to pick up before too long and that they would be going down to do it." [R. T. 36-37].

Upon returning to the junk yard Waddle asked Parga how she would contact him for the future purchase [R. T. 38]. Parga said she could call him when she had gotten the money [R. T. 38].

On May 25, 1967, Waddle met with Parga and said she had not been able to acquire the money for the kilos [R. T. 40]. When she asked if everything was "still go" he said yes and that "they had gone through 27 kilos that week" [R. T. 40-41].

Between May 25th and June 27th, the date in the indictment, Waddle had a number of phone conversations with Parga [R. T. 41, 43, 59-60].

On June 27, 1967, Los Angeles Deputy Sheriff Ramon Velasquez went with the informant to the Horseshoe Club in Gardena, California, at approximately 8:00 P. M. [R. T. 67]. Later defendants Bonney and Parga joined them [R. T. 67-69]. The informant introduced Parga to Velasquez and then Parga introduced Bonney to Velasquez [R. T. 69].

After a brief conversation relative to other matters, Parga stated, "let's get down to business." [R. T. 70]. When Velasquez asked how the transaction was to be consummated Bonney said the four men would leave and go to a garage where he and Parga would



load the deputy's car [R. T. 70]. "As soon as I was satisfied that there were 100 kilos of marihuana in there, I would pay Mr. Parga, that he [Bonney] did not want to touch the money, that the money was to go to Mr. Parga." [R. T. 70]. When Velasquez objected to the arrangement because he wasn't going to take \$6,500 "anyplace", Bonney decided to get it by himself [R. T. 70-71]. Bonney told Velasquez, the informant, and Parga to wait for him at the Kings Inn, next door to the Horseshoe Club [R. T. 71]. Velasquez then gave Bonney the keys to his car and watched Bonney drive south on Vermont Avenue [R. T. 72].

Velasquez, Parga and the informant proceeded to the Kings Inn where Parga related the following:

"We initially had a conversation with Mr. Parga where he told me that they took care of business the right way. If the 100 kilos was short in any way, one or two kilos short, to call them or him and he would make the short amount good.

"We also had another conversation with regards to Mr. Bonney losing \$5,000 the prior month and also an amount of two tons of marihuana someplace in Mexico. . . ." [R. T. 73].

Eldon G. Burkett, of the Los Angeles County Sheriff's Office followed Bonney and saw Bonney and Adolfo Carbajal, the third defendant, load marihuana into Velasquez' car and return it to the Kings Inn [R. T. 95-102].



At approximately 10:00 P. M. , Bonney appeared at the Kings Inn [R. T. 74], and Bonney asked Parga if he [Parga] had seen the money [R. T. 76]. When Parga answered in the negative, Velasquez said the narcotics would have to be seen before the \$6,500 would be paid [R. T. 76]. Bonney and the informant then went out to the car [R. T. 76]. In fifteen minutes the pair reappeared [R. T. 76], the informant gave a prearranged signal, and Parga and Bonney were arrested [R. T. 77].

Velasquez later went to his vehicle, opened the trunk, and found seven cardboard boxes of marihuana wrapped in differently colored paper packages [R. T. 78; Exs. 2, 3, 4, 5, 6, 7; Stipulation at R. T. 82; Stipulation at R. T. 83].

## V

### ARGUMENT

#### THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THE CONVICTION

---

A judgment of conviction must be sustained if, taking the view most favorable to the Government, there is substantial evidence to support it.

Glasser v. United States, 315 U. S. 60, 80 (1942);

Nye & Nissen v. United States, 168 F. 2d 846

(9th Cir. 1948), aff 'd. 336 U. S. 613 (1949).

Appellant's position on this appeal is that the Government failed to prove that Parga had possession, either actual or





constructive, of the marihuana in question and, therefore, the presumption of illegal importation and knowledge thereof was not a part of this case.

Initially, the conviction can be sustained without any reference to the "presumption" if the evidence shows that Parga knew the marihuana was illegally imported. Appellant, in his brief, places reliance on Hernandez v. United States, 300 F.2d 114 (9th Cir. 1962). Hernandez, at 124, says that its holding "does not concern those whose knowledge of the illegal importation of the narcotic drugs can be shown by direct or circumstantial evidence, without reliance upon the presumption based upon possession . . . . The rule which we announce relates only to that defendant who is not shown, directly or by circumstantial proof, to have had knowledge of the source of the narcotic drugs, or to have had their physical custody, and whose role in the scheme, if any, is so minor as not to support an inference that he shared in the control of the narcotic drugs. . . ."

In Hernandez the trial court found "there was no proof that the defendant personally had knowledge that the heroin was illegally imported and no proof that defendant personally had possession of the narcotics from which such knowledge could be presumed," 300 F. 2d at 120.

In the instant case, Parga had, as shown by the evidence, both actual knowledge of the illegal importation of the marihuana and constructive possession of it. Parga knew that the marihuana was smuggled in from Mexico by his explanation of his practice



and procedure. Judge Carr's finding of guilt is based, in part, on the testimony of Delia Waddle relative to Parga's statement of the "defendant bringing in this marihuana from Mexico" [R. T. 183].

The presumption of Section 176a does apply to the instant case. Parga had constructive possession by virtue of his ability to deliver marihuana as he said he could. The fact is that he produced the marihuana at this time and place promised, even though he did not physically drive it to the spot. It is to be noted that it was only because of Deputy Velasquez' protestations that Parga did not load his car with the marihuana.

In Cellino v. United States, 276 F. 2d 941 (9th Cir. 1960), the same Deputy Sheriff Velasquez was involved. In that case this Court said, "Where a defendant negotiates a sale and receives the purchase price, he has possession through dominion and control, even though delivery is made by another and there is no evidence the seller ever had actual possession" 276 F. 2d at 95. In the present case Parga negotiated the sale and was to receive the money except for the fact the arrest took place just prior thereto.

Appellant relies on Williams v. United States, 290 F. 2d 451 (9th Cir. 1961) to show lack of possession in the instant case. In a discussion of Williams by the Ninth Circuit in Brothers v. United States, 328 F. 2d 151 (9th Cir. 1964), the following appears, at 156:

"In holding that, under this testimony, Williams was not shown to have constructive possession of the narcotics in the refuse can,

Faint, illegible text, possibly bleed-through from the reverse side of the page. The text is arranged in approximately 15 horizontal lines.

Very faint text at the bottom of the page, possibly a signature or footer. It appears to be arranged in three lines.

the court emphasized the fact that no sale of narcotics between McCormick and Williams had been arranged. Williams the court said, was only contemplating entering into a partnership with the informer for the future sale of narcotics to third persons. 'We have no doubt,' this court said, 'the appellant either had dealt, or planned to deal in the future, in marijuana. But that does not prove possession of the two kilograms of marijuana on July 20, 1959, the date charged. 290 F. 2d at 453. The court, in Williams expressly reaffirmed the holdings of this court in Rodella v. United States, supra.

"The Williams case, therefore, is distinguishable from the case before us, where effective dominion and control was exercised over the narcotics as a means of consummating a sale already arranged. We hold that, here, the evidence of constructive possession of the narcotic drugs was adequate to warrant application of section 174 presumption."

In the instant case it is legally insignificant that the money, as planned, was not handed to Parga, or that the presumption of Section 176a rather than Section 174 is involved.



The evidence shows not only knowledge on Parga's part, but also his joint possession with Bonney and his power to control it by having it delivered as he said he could.

CONCLUSION

For the above stated reasons, the judgment of the District Court should be affirmed.

Respectfully submitted,

WM. MATTHEW BYRNE, JR.  
United States Attorney

ROBERT L. BROSIO  
Assistant United States Attorney  
Chief, Criminal Division

RONALD S. MORROW  
Assistant United States Attorney

Attorneys for Appellee  
United States of America

